

JAN 25 2006

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A BILL FOR AN ACT

RELATING TO TORTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 671, Hawaii Revised Statutes, is  
2 amended by adding eight new sections to be appropriately  
3 designated and to read as follows:

4 "§671-A Limitation on noneconomic damages.

5 Notwithstanding section 663-8.7, noneconomic damages as defined  
6 in section 663-8.5 shall be limited in medical tort actions to a  
7 maximum award of \$250,000.

8 §671-B Attorney's fees. (a) An attorney shall not  
9 contract for or collect a contingency fee for representing any  
10 person seeking damages in connection with an action for a  
11 medical tort in excess of the following limits:

12 (1) Forty per cent of the first \$50,000 recovered;

13 (2) Thirty-three and one-third per cent of the next  
14 \$50,000 recovered;

15 (3) Twenty-five per cent of the next \$500,000 recovered;

16 and

1        (4) Fifteen per cent of any amount on which the recovery  
2                    exceeds \$600,000.

3        The limitations shall apply regardless of whether the recovery  
4        is by settlement, arbitration, or judgment, or whether the  
5        person for whom the recovery is made is a responsible adult, an  
6        infant, or a person of unsound mind.

7        (b) If periodic payments are awarded to the plaintiff  
8        pursuant to section 671-H, the court shall place a total value  
9        on these payments based upon the projected life expectancy of  
10       the plaintiff and include this amount in computing the total  
11       award from which attorney's fees are calculated under this  
12       section.

13       (c) For purposes of this section, "recovered" means the  
14       net sum recovered after deducting any disbursements or costs  
15       incurred in connection with prosecution or settlement of the  
16       claim. Costs of medical care incurred by the plaintiff and the  
17       attorney's office overhead costs or charges are not deductible  
18       disbursements or costs for such purpose.

19       §671-C Assessing percentage of negligence. Upon request  
20       of any nonsettling healthcare provider against whom a plaintiff  
21       alleges a medical tort causing injury, the trier of fact shall  
22       consider, in assessing any percentage of negligence or other

1 fault, the negligence or other fault of all alleged parties,  
2 including the negligence or other fault of any person or entity  
3 who has entered into a settlement with the plaintiff for the  
4 claimed damages, even when the settlement has been determined to  
5 have made in good faith, pursuant to section 663-15.5.

6 §671-D Proportionate allocation of economic damages. The  
7 amount of economic damages allocated to a healthcare provider in  
8 a medical tort action shall be based upon the healthcare  
9 provider's proportionate percentage of negligence or other  
10 fault.

11 §671-E Noneconomic damages. (a) If the trier of fact  
12 renders a verdict for the plaintiff in a medical tort action,  
13 the court shall enter judgment of liability against each  
14 defendant healthcare provider in accordance with the percentage  
15 of negligence or other fault for compensatory damages that is  
16 attributed to the healthcare provider by the trier of fact.

17 (b) Joint and several liability shall apply if a  
18 healthcare provider's degree of negligence is found to be  
19 twenty-five per cent or more under section 671-F.

20 (c) Where a medical care provider's degree of negligence is  
21 less than twenty-five per cent, then the amount recoverable

S.B. NO. 2284

1 against that medical care provider for noneconomic damages shall  
2 be in direct proportion to the degree of the negligence assigned.

3 (d) Judgment shall not be entered against any healthcare  
4 provider who has not been named a party or has been released,  
5 dismissed, or otherwise discharged as a party pursuant to  
6 section 663-15.5."

7 SECTION 2. Section 663-11, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "**§663-11 Joint tortfeasors defined.** For the purpose of  
10 this part the term "joint tortfeasors" means two or more persons  
11 jointly or severally liable in tort for the same injury to  
12 person or property, whether or not judgment has been recovered  
13 against all or some of them~~[r]~~, except as provided for  
14 healthcare providers in chapter 671."

15 SECTION 3. Section 671-1, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "**§671-1 Definitions.** As used in this chapter:

18 [~~1~~] "Health care provider" or "healthcare provider"  
19 means a physician or surgeon licensed under chapter 453, a  
20 physician and surgeon licensed under chapter 460, a podiatrist  
21 licensed under chapter 463E, a health care facility as defined  
22 in section 323D-2, a chiropractor licensed under chapter 442, a

1 dentist licensed under chapter 448, a dental hygienist licensed  
2 under chapter 447, an acupuncture practitioner licensed under  
3 chapter 436E, a massage therapist licensed under chapter 452, a  
4 nurse licensed under chapter 457, an occupational therapist  
5 licensed under chapter 457G, an optometrist licensed under  
6 chapter 459, a pharmacist licensed under chapter 461, a physical  
7 therapist licensed under chapter 461J, a psychologist licensed  
8 under chapter 465, a marriage and family therapist licensed  
9 under chapter 451J, a dietitian licensed under chapter 448B, a  
10 radiologic technologist licensed under chapter 466J, a speech  
11 pathologist or audiologist licensed under chapter 468E, a  
12 veterinarian licensed under chapter 471, and the employees and  
13 legal representatives of any of them. Health care provider  
14 shall not mean any nursing institution or nursing service  
15 conducted by and for those who rely upon treatment by spiritual  
16 means through prayer alone, or employees of such institution or  
17 service.

18 [~~2~~] "Medical tort" means [~~professional negligence, the~~  
19 ~~rendering of professional service without informed consent, or an~~  
20 ~~error or omission in professional practice, by a health care~~  
21 ~~provider, which proximately causes death, injury, or other damage~~  
22 ~~to a patient.~~] a negligent act or omission to act by a healthcare

S.B. NO. 2284

1 provider in the rendering of professional services, or the  
2 rendering of professional service by a healthcare provider  
3 without informed consent, which act or omission or rendering of  
4 service without informed consent is the proximate cause of a  
5 personal injury or wrongful death, provided that such services  
6 are within the scope of services for which the provider is  
7 licensed and which are not within any restriction imposed by the  
8 licensing agency or licensed hospital."

9 SECTION 4. In codifying the new sections added by section 1  
10 of this Act, the revisor of statutes shall substitute appropriate  
11 section numbers for the letters used in designating the new  
12 sections in this Act.

13 SECTION 5. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun, before its effective date.

16 SECTION 6. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 7. This Act shall take effect on July 1, 2006.

19  
20 INTRODUCED BY:



21 BY REQUEST

# SB. NO. 2284

## JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO TORTS.

PURPOSE: To lower medical malpractice insurance premiums by adopting legislation that directly affects elements impacting medical malpractice insurance rates.

MEANS: Add five new sections to chapter 671 and amend sections 663-11 and 671-1, Hawaii Revised Statutes.

JUSTIFICATION: The current health care liability system is a costly and ineffective mechanism for resolving healthcare liability claims and compensating injured patients. There are no for-profit insurers licensed in Hawaii, and premium rates from nonprofit insurers have increased significantly, especially for medical specialties. The rise in medical malpractice insurance premiums has economically inhibited the ability of doctors to provide necessary services in rural areas and on the neighbor islands. Reform is required to address the adverse impact of the high cost of medical malpractice insurance on patient access to healthcare services, patient care, and cost-efficient healthcare in rural areas and the neighbor islands.

Impact on the public: The public interest is served because this bill may improve the availability of health care services and the fairness and cost-effectiveness of the healthcare liability system.

Impact on the department and other agencies:  
None.

GENERAL FUND: None.

OTHER FUNDS: None.

**SB. NO. 2284**

PPBS PROGRAM  
DESIGNATION:

OTHER AFFECTED  
AGENCIES:                   None.

EFFECTIVE DATE:           July 1, 2006.